IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2024] NZEmpC 213
ARC 55/2013
ARC 79/2013
ARC 25/2014
ARC 48/2014

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of execution
BETWEEN	KATHLEEN CRONIN-LAMPE First Plaintiff
AND	RONALD CRONIN-LAMPE Second Plaintiff
AND	MINISTER OF EDUCATION Defendant

Hearing:	13 September 2024 and by memoranda filed by 27 September 2024 (Heard at Wellington)
Appearances:	T Braun and E Anderson, counsel for plaintiffs B Heenan and L Goodwin, counsel for defendant
Judgment:	6 November 2024

INTERLOCUTORY JUDGMENT (NO 5) OF JUDGE B A CORKILL
(Application for stay of execution)

Background

[1] This judgment resolves an application for a stay of execution of awards of damages pending resolution of an appeal.

[2] Mr and Mrs Cronin-Lampe worked for the Board of Trustees of Melville High School (MHS), beginning in 1996 and 1997 respectively and until the conclusion of their employment in late 2012.

[3] During that period, the school and associated community suffered many traumatic events, including multiple deaths. In their roles as counsellors, Mr and Mrs Cronin-Lampe provided significant assistance to students, staff and community members in relation to those events. Eventually, they were diagnosed with PTSD.

[4] They raised personal grievances against MHS, asserting that health and safety and workplace obligations had not been met; they also alleged express and implied health and safety duties in their employment, stating that these had been breached by their employer. They alleged they had suffered significant losses over time.

[5] Initially, the claims they brought in the Employment Relations Authority were unsuccessful.[1] They accordingly brought relevant challenges. A further claim was removed by the Authority to the Court.[2] Numerous interlocutory issues were then dealt with by the Court. Eventually their claims were heard before me in 2023.

[6] In the first of two substantive judgments, I extended time for the bringing of Mr and Mrs Cronin-Lampe's personal grievances.[3] In those circumstances, I was required under the Employment Relations Act 2000 (the Act) to direct the parties to attend mediation. This event was unsuccessful. Accordingly, I carried on to resolve the liability and quantum issues.[4] I found that MHS had breached its contractual health and safety obligations to Mr and Mrs Cronin-Lampe, and that the risk of harm associated with these breaches was reasonably foreseeable. I concluded that the breaches were a material cause of the plaintiffs' PTSD and associated losses.

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1 *Cronin-Lampe v Board of Trustees of Melville High School* [2013] NZERA 249 (Member Crichton).

2 *Cronin-Lampe v Board of Trustees of Melville High School* [2014] NZERA 223 (Member Crichton).

3 *Cronin-Lampe v The Board of Trustees of Melville High School* [2023] NZEmpC 144, [2023] ERNZ 837 [*Cronin-Lampe (No 1)*].

4 *Cronin-Lampe v The Board of Trustees of Melville High School (No 2)* [2023] NZEmpC 221, [2023] ERNZ 905 [*Cronin-Lampe (No 2)*].

[7] I also upheld Mr and Mrs Cronin-Lampe's statutory personal grievance claims, stating in essence that MHS had not acted as a fair and reasonable employer could have done in identifying and managing the issues that had arisen.[5]

[8] I was not satisfied that a statutory bar under the Accident Compensation Act 2001 applied.[6]

[9] In light of all the circumstances, I concluded that the applicable period for the recovery of losses ran from 13 November 2012 when Mr and Mrs Cronin-Lampe's employment ended, until a notional date of judgment of 31 March 2019.[7]

[10] I concluded that Mr and Mrs Cronin-Lampe were entitled to damages for non-economic loss, for lost remuneration and superannuation, for losses due to the sale of their rental property to their daughter and related lost net rental income, and to meet anticipated medical expenses.

[11] I also found that a deduction of five percent from the amounts that would otherwise have been awarded to Mr and Mrs Cronin-Lampe was warranted to reflect their contribution to the losses.[8] These related to failures to provide greater specificity of their conditions to their employer in mid-2011 and to disclose the impact of their circumstances, which may have led to the provision of professional assistance earlier than was obtained.[9]

[12] In summary, I awarded Mrs Cronin-Lampe damages and interest totalling $829,355. I awarded Mr Cronin-Lampe damages and interest totalling $962,962. These awards totalled $1,792,317.[10] I will refer to these awards as the "judgment sum".

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5 At [112]–[135].
6 At [201] and [221].
7 At [237]–[245].
8 At [421]–[442].
9 At [436] and [439].
10 The parties referred to the sums awarded on a combined basis. I prefer to view them as separate awards for each individual plaintiff. However, for the purposes of assessing the present application I will refer to the combined amounts given the information provided about Mr and Mrs Cronin-Lampe's financial circumstances was provided on that basis.

[13] I also assessed remedies for their personal grievances and interest which totalled $428,235 for Mrs Cronin-Lampe and $476,894.50 for Mr Cronin-Lampe.[11] These sums amounted to $905,129.50 in total. I will refer to these as the "PG amounts". As the sums assessed as damages and interest exceeded the PG amounts, I entered judgment for the former sums.

[14] On 27 January 2024, the school was closed under a statutory process that was unrelated to these claims, and which had commenced in May 2022. Following the closure, the Minister of Education inherited all the assets, liabilities, and debts of the school, including responsibility in relation to these proceedings. Accordingly, on 27 February 2024, I substituted the Minister as defendant.

The Court of Appeal's grant of leave to appeal

[15] On 29 January 2024, the Minister applied to the Court of Appeal for leave to appeal findings made by this Court as to damages, and an extension of time to apply for that leave. No liability issues were challenged.

[16] After hearing the Minister's applications, the Court of Appeal issued a judgment granting leave to appeal on 13 August 2024.[12]

[17] In its decision, the Court referred to the history which had occurred, granted an extension of time for bringing the application for leave,[13] and went on to discuss the terms on which the application for leave should be granted.

[18] It recorded that the following questions of law had been proposed,[14] also setting out the reasons advanced by the Minister for each question:

> (a) Did the Employment Court adopt an incorrect test for causation to conclude MHS's contractual breaches were a material cause of the harm suffered by Mr and Mrs Cronin-Lampe?

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11 See Schedules A and B attached.
12 *Minister of Education v Cronin-Lampe* [2024] NZCA 382.
13 Which was necessary because the date for so doing expired prior to the Minister assuming the relevant responsibilities.
14 *Minister of Education v Cronin-Lampe*, above n 12, at [11].

The Minister had submitted that the Court erred in law by holding that contractual breaches from 2 December 2010 onwards were a material cause of Mr and Mrs Cronin-Lampe's PTSD, whilst also finding that their condition had pre-existed prior to December 2010. It was submitted that these cannot be reconciled, and are inconsistent with the standard "but for" approach to causation.

(b) Did the Employment Court err by not properly considering remoteness of damage in the form of lost income and superannuation, and in respect of the sale of Mr and Mrs Cronin-Lampe's rental property and lost net rental income?

(i) It had been submitted that the Court incorrectly assessed the issue of remoteness at a time after the relevant employment agreements were entered into. This approach was contrary to established principle – that reasonable foreseeability should be assessed at the time the contract was entered into.

(ii) It was submitted that the Court failed to consider whether it was reasonably foreseeable that Mr and Mrs Cronin-Lampe would decide (on medical advice) to not seek treatment for PTSD during the course of the litigation. It was submitted that loss from this decision was too remote to be recoverable.

(iii) It was submitted that the sale of the rental property at below the property's capital value was, as a matter of law, not reasonably foreseeable and too remote.

(c) Was the Court wrong to allow only a five percent deduction to reflect the contributory behaviour of Mr and Mrs Cronin-Lampe?

It was submitted that the Court erred in law by failing to apply any established legal principle to justify the small size of the deduction, and

instead sought to justify the modest deduction on the basis that the damages to which it would be applied were, in themselves, substantial.

[19] The Court concluded that leave should be granted, albeit not on the precise questions which had been proposed.[15] It noted that the issues of causation, remoteness and contribution had unusual features because there was pre-existing mental injury prior to the period to which the claims related and because Mr and Mrs Cronin-Lampe did not seek treatment when they were diagnosed. Further, the superannuation, loss of capital on the investment property sold to Mr and Mrs Cronin-Lampe's daughter and the consequential loss of rental income were said to relate to decisions made subsequent to the date the contracts were entered into and subsequent to when the specific duties owed by MHS first arose and when those duties were first breached.

[20] The Court considered there is a general and public importance in whether awards of this size, which included awards under these heads, were approached correctly.[16] It noted there was limited appellate authority as to the approach to such awards in this context, particularly where damages were calculated in contract in the Employment Court jurisdiction.[17] It concluded that the general and public importance in the correct approach to the recoverable damages in the circumstances raised by the case was one that "ought to be submitted to [the Court] for determination", and so warranted the grant of leave. It was acknowledged that an appeal would involve further delay of what had already been a much protracted claim for Mr and Mrs Cronin-Lampe.

[21] The following questions of law were approved:[18]

(a) Did the Employment Court err in its approach to damages in light of the respondents' pre-existing mental injury and their decision not to seek treatment when they were first diagnosed with Post Traumatic Stress Disorder?

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15 At [13].
16 At [14].
17 Reference was made by the Court of Appeal to an earlier full bench decision of the Court of Appeal in *Attorney-General v Gilbert* [2002] 2 NZLR 342, [2002] 1 ERNZ 31 (CA).
18 *Minister of Education v Cronin-Lampe*, above n 12, at [16].

(b) Did the Employment Court err in its approach to whether superannuation losses, capital loss on the rental investment, and loss of rental payments were recoverable and as to quantum if recoverable?

Application for stay and opposition

[22] Earlier, on 12 February 2024, the Minister applied to this Court for a stay of various awards. The application relevantly sought:

> … a stay of execution of the award of damages which may be impacted by a wholly or partially successful challenge by the Minister of Education against *Cronin-Lampe v The Board of Trustees of Melville High School (No 2)* [2023] NZEmpC 221…, which awarded a Judgment Sum totalling $1,792,317, with the exception of $356,320.50 which was paid by the Minister of Education to the plaintiffs on 8 February 2024. The stay is therefore being sought against the balance … being $1,435,996.50 (excluding interest); …[19]

[23] The application went on to state that the proposed appeal would seek to challenge the "common law causes of action" and, in particular, the test for causation adopted, issues of remoteness and contributory conduct. The application then traversed the usual criteria for the granting of a stay. The Minister's primary position was that the appeal may be rendered nugatory if a stay was not granted because if the balance was to be paid, it "is likely unrealistic to expect that (some) funds would not be spent in the meantime" and thereby be unrecoverable. It was highlighted that only a partial stay was sought because of the payment made to Mr and Mrs Cronin-Lampe on 8 February 2024, a matter which I will discuss later.

[24] Mr and Mrs Cronin-Lampe filed a notice of opposition in which they, too, referred to the usual criteria regarding applications for stay. Primarily, they say their opposition is based on the significant prejudice they have suffered, and will continue to suffer, by the judgment sums remaining unpaid. They say they should, in the circumstances, receive the fruits of the judgments in full. It was not accepted that any amounts paid would not be recoverable. A copy of the affidavit which had been filed

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[19] At the time, a stay was also sought in respect of determining costs; this part of the application for stay was dismissed in my judgment of 7 March 2024, *Cronin-Lampe v Minister of Education (in respect of the Ministry of Education)* [2024] NZEmpC 39 [*Stay of costs judgment*]. The issue of costs was itself resolved in my judgment of 10 July 2024 in *Cronin-Lampe v Minister of Education (in respect of the Ministry of Education)* [2024] NZEmpC 125 [*Costs judgment*]. I was subsequently advised that no stay was sought by the defendant in respect of this award.

for Mr and Mrs Cronin-Lampe in the Court of Appeal in connection with the application for leave to appeal was also filed; it described their circumstances and the adverse effects of the long-running litigation on them. It is also submitted that these effects would be exacerbated by an appeal process.

The hearing of the application for stay

[25] It was agreed with counsel that detailed submissions would be filed in advance of the hearing. The submissions referred to Mr and Mrs Cronin-Lampe's financial circumstances, including the existence of a residential property which it was asserted could be available for security purposes. However, no direct evidence was filed by Mr and Mrs Cronin-Lampe on this topic. The Minister filed an affidavit annexing copies of documents relating to the title of the property which showed there were registered encumbrances; this suggested there were debts secured over the property.

[26] At the subsequent oral hearing, both sides had a full opportunity to elaborate on their written submissions. Some matters arose from that process which led to directions for the filing of supplementary submissions, as well as detailed affidavit evidence as to the assets and liabilities of Mr and Mrs Cronin-Lampe, which I will describe shortly.

Legal framework

[27] Both parties presented their cases with reference to the standard principles governing stay applications. These are well established and may be summarised briefly.

[28] Section 214(6) of the Act provides that neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or appeal relates unless the Court or the Court of Appeal so orders.

[29] In determining whether to grant a stay, the Court must weigh the factors "in the balance" between the successful litigant's rights to the fruits of a judgment and "the need to preserve the position in case the appeal is successful".[20]

[30] This requires consideration of a range of factors including, but not limited to:[21]

(a) whether the appeal may be rendered nugatory if the stay is not granted;

(b) whether the appeal is brought for good reasons, and in good faith;

(c) the effect on any third parties;

(d) any injury or detriment to the successful party if the stay is granted;

(e) any public interest in the proceedings;

(f) the novelty and importance of the questions involved in the case;

(g) the apparent strength of the case on appeal; and

(h) ultimately, the overall balance of convenience.

[31] It is well established that the assessment is highly fact specific, requiring each case to be determined on its own circumstances.[22] The size of the sum ordered in a litigant's favour at first instance may be relevant to a determination of an application for stay, although the extent to which that it so is fact specific.[23]

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20 *Duncan v Osborne Buildings Ltd* (1992) 6 PRNZ 85 (CA) at 87; and *Keung v GBR Investment Ltd* [2010] NZCA 396, [2012] NZAR 17 at [11].

21 *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [9]; and *New Zealand Cards Ltd v Ramsay* [2013] NZCA 582 at [7].

22 *Duncan v Osborne Buildings Ltd*, above n 20.

23 *Wilson-Grange Investments trading as the Grange Bar and Restaurant v Guerra* [2022] NZEmpC 109 at [8].

[32] At the end of the day, the Court must stand back and balance the competing rights. An applicant must establish a reasonable basis for the orders which are sought.[24]

Preliminary matters

[33] Before analysing the applicable criteria, there are several preliminary matters to which reference should be made.

[34] First, I refer to the sum that was paid by the Minister to Mr and Mrs Cronin-Lampe on 8 February 2024. It was said to consist of:

(a) Mr and Mrs Cronin-Lampe's anticipated medical expenses, as outlined in the substantive judgment, being $5,016 for each, which was net of the amount fixed for contributory purposes of five per cent;[25]

(b) a payment for hurt and humiliation that would have been awarded for their personal grievances, being the amount specified in the substantive judgment less the reduction for contribution:[26] for Mrs Cronin-Lampe the sum of $80,750, and for Mr Cronin-Lampe the sum of $60,562.50; and

(c) a sum equivalent to one year's lost income for each of Mr and Mrs Cronin-Lampe, for the period April 2013 to March 2014 plus interest, but less the reduction for contribution: for Mrs Cronin-Lampe $104,625 and for Mr Cronin-Lampe $100,261.[27]

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24 *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19]; *SP Blinds Ltd v Hogan* [2022] NZEmpC 104, [2022] ERNZ 416 at [12]; and *Pact Group v Robinson* [2023] NZEmpC 24 at [5].

25 *Cronin-Lampe (No 2)*, above n 4, at [409] and [410].

26 At [295] and [297].

27 The Court was subsequently advised that the interest calculations ran to 20 December 2023. This meant the interest payable under the judgment from that date until the date of payment remains unpaid.

[35] The Minister accordingly paid $356,230.50.[28] She submitted that this sum was more than sufficient to see Mr and Mrs Cronin-Lampe through the appeal process. It was an appropriate "intermediate position that should be maintained pending the outcome of [the] appeal proceedings". Deducting that partial payment from the judgment sum leaves a balance due of $1,436,086.50 to which I will refer as the "balance of the judgment sum".

[36] Second, by the time the application for stay was heard by this Court, the Court of Appeal had granted leave to appeal on the two proposed questions of law.[29] The notice of appeal filed by the Minister included an indication as to the findings she would invite the Court of Appeal to make if the approved questions were answered in her favour.

[37] The notice stated that a finding would be sought that the Employment Court's award of damages arising from contractual breaches be set aside, apparently in their entirety. In the alternative, the Minister would seek a finding that the awards of damages for lost income and superannuation be reduced to reflect the period of treatment for PTSD, and that the awards of damages relating to the losses arising from the sale of the rental property and rental investment be set aside.[30]

[38] The Minister would also seek an order remitting questions of quantum (if any) to the Court for reassessment in light of the Court of Appeal judgment, and an order that costs awarded in the Court be overturned and reassessed.

[39] Third, counsel advised that the likely hearing time for the appeal would be two days and that the appeal process would likely proceed well into 2025, if not later. Subsequently, I was informed that the hearing will most likely be in 2026. For present purposes, I proceed on the basis that an order of stay could be in effect for about two years.

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28 It appears this may have been an overpayment of $90 based on the breakdown of figures above which were provided to the Court.

29 See above at [21].

30 The notice of appeal does not refer to the issue of rental investment, but counsel told the Court at the hearing that this item was intended to be covered by the notice. Nor does it state what order would be appropriate for general damages for non-economic loss and/or whether any such sum should be subject to a reduction for contribution.

Analysis

Appeal may be rendered nugatory if a stay is not granted

[40] As noted, this consideration was the primary basis of the Minister's application. Ms Heenan, counsel for the Minister, elaborated, stating that the appeal sought to challenge the amount of the judgment sum in respect of the common law causes of action. She said that the appeal may be rendered nugatory if the Minister was required to satisfy the judgment sum while the appeal is pending, there being a likelihood of recovery problems if the appeal is allowed because some or all of the sums paid may be spent over time. That was said to favour a stay, particularly because the quantum of the award is significant.[31]

[41] That submission relies, in part, on what was asserted to be the "parlous" financial circumstances of Mr and Mrs Cronin-Lampe, and on the quantum of the award in their favour. Reference was made to comments in my judgment and to Mr and Mrs Cronin-Lampe's own account of their financial need, to support the submission that the sums paid would likely be spent.

[42] In response, Mr Braun, counsel for Mr and Mrs Cronin-Lampe, submitted that while there was ample evidence that Mr and Mrs Cronin-Lampe had not been able to retire and were not as financially secure as they may have hoped, they were not destitute. Had a title search been undertaken, it would have provided assurance that they were still the proprietors of their residential property. The implication was that the Minister had failed to prove to the necessary standard that the funds may not be recoverable. More than a vague assertion is required.[32]

[43] As indicated earlier, this submission led to the Minister introducing evidence in reply confirming that the property in question was subject to a registered mortgage, together with a caveat relating to an agreement to mortgage between Mr and Mrs Cronin-Lampe and their lawyers which was registered before the lengthy hearing commenced.

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31 Citing *Wilson-Grange Investments v Guerra*, above n 23.
32 Citing *SP Blinds Ltd v Hogan*, above n 24, at [11].

[44] At the hearing of the present application, I suggested it would be appropriate for the Court to be provided with accurate financial information from Mr and Mrs Cronin-Lampe, since all the Court had before it were vague assertions on both sides. Given the unusual circumstances, I ultimately directed this step. The affidavit was duly filed, together with supplementary submissions from the parties about its content.

[45] As to Ms Heenan's second point, Mr Braun accepted that the judgment sum is a substantial figure, but noted that it is for two individuals and arises from a particular set of circumstances. It was submitted that as a matter of principle, a stay application should not be more readily granted simply because a party has had substantial success; the facts of each case necessarily inform the assessment.[33]

[46] In considering whether the appeal would be rendered nugatory, it is necessary to consider what elements of the judgment are subject to appeal. That is because the relief sought, in the form of a stay, must protect the position that will be argued on appeal.[34] In other words, would the Minister be deprived of the results of the appeal, if successful?[35]

[47] When dealing with the quantum of Mr and Mrs Cronin-Lampe's claims, I assessed the position both at common law and under the statutory provisions for remedies where a personal grievance is established.[36] In each case, the common law approach confirmed the same or a higher award than the statutory approach.[37] Judgment was entered accordingly.

[48] At the hearing of the stay application, the status of these concurrent awards was discussed. That was because it did not appear that leave to appeal had been sought regarding the assessment of the PG amounts. It appeared to be common ground at that time that whatever the outcome of the appeal as to damages, the findings concerning

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33 At [14].

34 See *Fullers Bay of Islands Ltd v Otehei Bay Holdings Ltd* HC Auckland CIV-2009-404-7207, 23 February 2011.

35 See *New Zealand Insulators Ltd v ABB Ltd* (2006) 18 PRNZ 459 (CA) at [19]; citing *Polini v Gray* (1879) 12 Ch D 438 (CA) at 446.

36 *Cronin-Lampe (No 2),* above n 4, at [225].

37 At [286], [287], [295], [327], [338], [339]–[345], [360], [361], [388], [389], [397], [398] and [410]; and see [12]–[13] above.

the PG amounts were not under appeal. I raised with counsel the proposition that Mr and Mrs Cronin-Lampe were therefore entitled at least to a sum equivalent to the PG amounts because such amounts would not be at risk if the appeal is successful. This logic was not apparently in dispute and the hearing proceeded on that basis.

[49] In a supplementary memorandum filed after the hearing, Ms Heenan submitted that the Minister in fact disputes that approach because the basis for the PG amounts included topics that would be subject to the appeal, that is the assertions as to causation, remoteness and contribution.

[50] Given that turn of events, I put the issue of the PG amounts to one side for the time being. It is necessary, for present purposes, to consider whether the judgment sum and the PG amounts may both be at risk and therefore present a repayment risk. This issue requires an assessment of Mr and Mrs Cronin-Lampe's financial circumstances, to which I now turn.

Financial circumstances

[51] Mr and Mrs Cronin-Lampe's evidence confirms that from the partial payment made in February 2024, $11,000 was utilised for an urgent medical procedure; the balance of that payment, and the amount ordered as a contribution to costs, was applied to outstanding debts and obligations, predominantly legal fees.

[52] Both Mr and Mrs Cronin-Lampe are in receipt of work income; Mr Cronin-Lampe says his (reasonable) income is sustainable for the medium term, suggesting an ability to service the couple's debts on a continuing basis.

[53] Schedule C summarises Mr and Mrs Cronin-Lampe's key asset and liabilities as at the present time. The schedule indicates equity in the residential property of approximately $936,000 after payment of current secured debts, although there is an interest component that has yet to be agreed. There is further indebtedness of approximately $280,000 which relates to debts incurred in connection with the litigation and debts due to the Inland Revenue Department. Although pinpoint accuracy is not possible, the available information suggests that there would be a

current net asset value of approximately $656,000 if the identified debts of $1,093.98 were to be cleared.

[54] It is also relevant to note that if the balance of the judgment sum were to be paid by the Minister in the near future, and if Mr and Mrs Cronin-Lampe's practice of reducing debt were to be followed which Mr Cronin-Lampe says on oath they wish to do, the gross sum would not be available in its entirety for debt reduction. This is because a significant proportion of the payment would be subject to PAYE at the highest current rate, given the amount likely earned as wages by each and the quantum of the payment.[38]

[55] A yet further consideration is that Mr and Mrs Cronin-Lampe wish to be able to meet their Court of Appeal costs (perhaps involving the retention of a King's Counsel), undertake deferred work on their home, and possibly take a holiday, all of which they say would total $165,000. Again, those sums would likely have to be met from payments carrying significant PAYE liabilities.

[56] As noted, the balance of the judgment sum payable by the Minister would be $1,436,086.50, plus interest to the date of payment. As there may be different tax implications depending on the breakdown of that payment, it is difficult to predict with certainty what the net of tax amount would be for Mr and Mrs Cronin-Lampe.

[57] There would, however, be sufficient to at least satisfy the sums secured over their property (being in the region of at least $814,000).[39]

[58] On that assumption, Mr and Mrs Cronin-Lampe would then have a freehold property currently estimated as having a value of at least $1,750,000 (inflation and capital gains unaccounted for over the next two years), being their main asset at present.

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[38] This conclusion is based on the premise that the relevant tax income bracket for each of Mr and Mrs Cronin-Lampe would be above $180,000 for which the income tax rate of 39 per cent would apply. Interest paid on lost wages awards may also be taxable.

[39] This conclusion does not take account of an unknown interest liability in respect of the sum to which the caveat relates, being legal fees owed to Mr and Mrs Cronin-Lampe's current lawyers. I note that the caveat was registered on 21 October 2022; accordingly, I would not expect the interest to be a significant consideration.

[59] Mr and Mrs Cronin-Lampe may also be able to clear or reduce their other anticipated liabilities ($280,000), depending on the amount consumed by PAYE liabilities.[40] There are also other proposed expenses (estimated at $165,000) to which the balance of the judgment sum might be applied.

[60] However, there are several considerations that would likely mitigate any risk of default if repayment is subsequently required, and as to the couple's ability to repay.

[61] First, Mr Cronin-Lampe's evidence is that he intends to continue working. He currently earns an income of approximately $170,000, while Mrs Cronin-Lampe is receiving some (albeit modest) income. This suggests work income is another resource by which the couple may be able to service any repayment or judgment debt ordered against them (or which they could use to reduce their liabilities in the intervening two years).

[62] Second, I accept Mr Braun's submission that if it transpired that PAYE had been overpaid, in the event that Mr and Mrs Cronin-Lampe were required to repay some of the lost income awards made in their favour, that overpayment would likely be recoverable.

[63] Third, Mr Braun also submitted it is inherently unlikely that even if the Minister were to succeed on appeal, the entire judgment sum would be overturned and need to be repaid by Mr and Mrs Cronin-Lampe. I return to this point later.

[64] The first two factors suggest that Mr and Mrs Cronin-Lampe's financial circumstances are unlikely to be as dire as has been asserted and that there are other means which might be used to facilitate repayment. There appears to be sufficient security to facilitate repayment of any portion of the judgment sum that might be subject to a successful appeal, particularly when viewed against the relevant circumstances I have outlined.

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[40] See above at [54], n 38.

[65] I note that the Minister seeks to disturb the Court's costs award,[41] and for costs to be reassessed in light of the Court of Appeal's findings. She also seeks costs in the Court of Appeal. I accept those points may slightly increase a repayment/payment risk, but for reasons that follow, that is not determinative.

Conclusion – will the appeal be rendered nugatory?

[66] The "common law causes of action", or contractual damages, are clearly under appeal. In respect of those sums (that is, the judgment sum), I have found that there is insufficient support for the contention that there will be repayment issues. In short, there does not appear to be a risk the appeal will be rendered nugatory in respect of the contractual damages if the balance of the judgment sum is paid. Repayment of the full costs award may present a slight risk of difficulty for repayment, but as I will explain shortly, this is unlikely.

[67] That all said, another fundamental issue which the Minister faces is that the status of the PG amounts may fall for consideration if the appeal in respect of the judgment sum (based on contractual damages) succeeds in whole or in part. The PG amounts may engage, as providing greater remedies, if a significant portion of the judgment sum is overturned. There are four points which are relevant to this scenario.

[68] First, the Minister's application for stay was brought squarely on the basis that the "common law causes of action" would be at issue on appeal. This is evident from the application for stay as made to this Court and the submissions made in support of it. No reference was made to an appeal regarding the PG amounts until after the hearing of the stay application. In my view, the Court of Appeal's leave judgment, and the notice of appeal, also suggest that the issues on appeal will focus on contractual or common law damages.[42]

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41 I awarded a total of $536,590.02 for costs and disbursements in the Court and Authority: *Cronin-Lampe Costs*, above n 19, at [105]–[106]. I note that Mr and Mrs Cronin-Lampe succeeded on various topics that are not the subject of appeal, such as obtaining leave to raise their personal grievances out of time, resisting the question of the statutory bar under the Accident Compensation Act 2001, establishing liability on both causes of action and in establishing the PG amounts.

42 See *Minister of Education v Cronin-Lampe,* above n 12, at [14] where the Court of Appeal held that "the correct approach to the recoverable **damages**…warrants the grant of leave" (emphasis added).

[69] Second, the assessment of common law damages was made on a different basis from the assessment of statutory remedies. I found that those remedies were grounded on grievances that were broader in nature than the common law breaches and included management of employment-related issues. This distinction was relevant when assessing remedies.[43]

[70] Third, the assessment of damages on the one hand, and of remedies under the Act on the other, differ in approach.[44] Assessing causation for the purpose of statutory remedies also differs from the test applied for contractual damages.[45] While notions of remoteness of loss "remain applicable" and other common law principles may provide useful analogies for the purpose of assessing statutory remedies,[46] the Act itself sets out the assessment for establishing the necessary connection between the loss and the remedy.[47] It also sets out its own assessment for contributory conduct.[48] On the information before me at present, it seems unlikely the Court of Appeal's findings on the common law issues will inevitably apply to both the contractual and personal grievance causes of action.

[71] Fourth, the Minister has, in her supplementary memorandum filed after the hearing, raised an issue as to the period of time for which a lost remuneration remedy should extend for the purpose of assessment of the personal grievance remedies. It was argued that the commencement of the period should be the date when Mr and Mrs Cronin-Lampe were diagnosed with PTSD, on the basis that treatment could have commenced at that time. Referring to an estimated 18-month treatment period, it was submitted that such treatment would have concluded six months after their

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43 *Cronin-Lampe (No 2)*, above n 4, at [291].

44 See, for example, *Attorney-General v Gilbert*, above n 17. Compare the summary of principles in *Telecom South Ltd v Post Office Union (Inc)* [1992] 1 NZLR 275, [1992] 1 ERNZ 711 (CA); *Telecom New Zealand Ltd v Nutter* [2004] 1 ERNZ 315 (CA) at [70]–[79]; and *Sam's Fukuyama Food Services v Zhang* [2011] NZCA 608, [2011] ERNZ 482 at [24]–[26].

45 See, for example, the practice of allowing for contingencies in *Telecom South* Ltd, above n 44, at 716 and 722; and *Sam's Fukuyama Food Services*, above n 44, at [37]–[40]. See also *Aoraki Corp Ltd v McGavin* [1998] 3 NZLR 276, [1998] 1 ERNZ 601 (CA) at 617 for the principle that remedies must be directed to the particular wrong.

46 See *McKendry v Jansen* [2010] NZEmpC 128, [2010] ERNZ 453 at [47] and [74].

47 See Employment Relations Act, s 123(1)(b) and (c)(ii): "as a result of the grievance" and "might reasonably have been expected to obtain if the personal grievance had not arisen". See also *Richora Group Ltd v Cheng* [2018] NZEmpC 113, [2018] ERNZ 337 at [47]–[48].

48 I applied this analysis to the assessment of contributory conduct for contractual damages by analogy and by relying upon the Court's equity and good conscience jurisdiction.

employment ended.[49] It was submitted, therefore, that only six months' lost remuneration was appropriate for the PG amount.

[72] Whether that submission is accepted is now ultimately for the Court of Appeal to determine. While acknowledging the lack of full submissions on the subject as well as the need for restraint in any comment by this Court, I note that the expert evidence and the circumstances at the relevant time suggest it is unlikely the complex mental health conditions would have been resolved within 18 months, given the prolonged litigation.[50]

[73] In light of these points, I am not satisfied that the Minister has adequately identified a possible scope of appeal in respect of the personal grievance remedies, nor the position to be preserved in respect of those. The submissions as to quantum lacked specificity (including which aspects of the PG amounts would be at risk). It is unclear how long PTSD treatment might have taken and on which date the Minister says treatment should have commenced. In all these circumstances, I am left with considerable doubt as to whether the PG amounts, or at least the full extent of them, are at risk on appeal as the Minister contends they are.

[74] Returning to the judgment sum, I accept Mr Braun's submission that it is unlikely the entire judgment sum would be overturned and need to be repaid by Mr and Mrs Cronin-Lampe.[51] Further, even if the PG amounts are captured by the appeal (which does not appear to be the case), it is inherently unlikely they would be set aside in their entirety.[52]

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49 The Minister has not identified what she says the date of diagnosis was. However, it is noted that both Mr and Mrs Cronin-Lampe were formally diagnosed with PTSD on 1 August 2012 and their employment ended in November 2012; the intervening period is three months. From August 2012 an 18-month treatment period would run until at least February 2014.

50 The Court received a range of expert evidence, including as to the impact of litigation on persons who have suffered mental harm. The expert who suggested an appropriate timeframe for the treatment of PTSD, on 1 August 2012, was not asked to consider, and did not consider, the debilitating effect of extended litigation on a treatment programme for PTSD. The litigation commenced in January 2013 with the filing of the statements of problem in the Employment Relations Authority.

51 I note, for example, that the notice of appeal does not challenge the quantum of damages for non-economic loss, totalling $216,125, nor the medical expenses.

52 While the notice of appeal does not refer to the personal grievances, based on her subsequent memorandum, the Minister does not appear to challenge the conclusions as to justification and liability for the personal grievances. Nor does she appear to put assessment of compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 in issue.

[75] Further, it is unlikely that the full costs award would be overturned. That is in part because I have accepted that the prospect of the entire judgment sum (including the PG amounts) being eroded on appeal is slight to impossible. Also, Mr and Mrs Cronin-Lampe succeeded on a range of other matters that are not the subject of the appeal.[53] Those considerations further minimise any repayment risk in respect of costs.

[76] The Court's restraint of its own orders should be the least necessary to preserve the Minister's position against the prospect of the appeal succeeding. Since this was a money judgment, the Minister is required to make some concession to the existence of that judgment; in other words, to put her best foot forward.[54] With that in mind, I find there is insufficient basis to conclude the appeal will be rendered nugatory if the balance of the judgment sum is paid.

[77] Finally, I note that in any event, this particular consideration is not necessarily determinative.[55]

Novelty and importance of the questions of law, and public interest

[78] Ms Heenan submitted that the appeal relates to questions of law which are novel, and which are of general and public importance, particularly those relating to the test for causation, issues of remoteness and as to contributory conduct. She said that it was in the public interest to have the Court of Appeal explore the proper approach to breaches of contractual and health and safety obligations in an employment law context, as well as the proper measure of damages for any relevant breach. The outcomes would have significant implications for the obligations and potential liabilities of all employers, including school boards of every state school in Aotearoa New Zealand. Accordingly, there was significant public importance in the novel questions. This submission was not contested by Mr and Mrs Cronin-Lampe.

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53 See above at [65], n 41, and [74], n 52.
54 *Bathurst Resources Ltd v L&M Coal Holdings Ltd*, above n 24, at [19].
55 *Cousins v Heslop* [2007] NZCA 377, (2007) 18 PRNZ 677; and *Keung v GBR Investment Ltd*, above n 20, at [20].

[79] As explained earlier, the Court of Appeal acknowledged the force of this point, concluding that there was a general and public importance in whether an award of the size made in this case was approached correctly.[56]

[80] I accept this consideration is engaged, but it must be balanced against the various other identified factors.

Appeal is brought for good reason and/or in good faith

[81] Ms Heenan emphasised that the above factors showed that there were good reasons for bringing the appeal, and that the Minister was doing so in good faith.

[82] These points are not contested by Mr and Mrs Cronin-Lampe.

[83] I accept the appeal is being brought in good faith.

Injury or detriment to the successful party if the stay is granted/effect on any third parties

[84] Ms Heenan acknowledged that any stay would mean that Mr and Mrs Cronin-Lampe would not "immediately benefit" from the fruits of the judgments.

[85] She said this was mitigated, however, due to the fact that a partial payment had been made, as noted earlier.[57] It was suggested, therefore, that the impact of a stay upon them would be "minimal".

[86] This point is strongly contested by Mr and Mrs Cronin-Lampe. Mr Braun submitted that it is well established that the starting point of the Court's inquiry is that a successful party should be able to enjoy the fruits of their judgment, even when the underlying decision is subject to appeal.

[87] Detailed reference was made to evidence filed for Mr and Mrs Cronin-Lampe when opposing leave in the Court of Appeal. It described the toll of the litigation over a significant period of time, which had exacerbated their trauma and eroded their

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56 *Minister of Education v Cronin-Lampe*, above n 12, at [14].
57 See above at [34]–[35].

resilience. It was argued that they continued to be "fragile, immobilised, anxious and overwhelmed".

[88] Having regard to the concerns set out in that evidence, it was submitted that the adverse impact of the granting of a stay would be significant. The non-payment of funds would cause financial detriment and place further pressure on Mr and Mrs Cronin-Lampe who were already in an "extremely anxious state". The non-payment of the awards would catalyse their stress. Mr Braun said Mr and Mrs Cronin-Lampe's circumstances differ from those of many respondents involved in an appeal of this nature. Implicit in Mr Braun's submission is the suggestion that the payment of the judgment sum also carries with it an element of symbolism for Mr and Mrs Cronin-Lampe's wellbeing. That includes an acknowledgement of the ongoing harm they are suffering and the futility of seeking treatment while the litigation is underway.

[89] Further, as I have mentioned, the Court was subsequently informed that the Court of Appeal hearing will be in 2026. That is also relevant to the concerns identified.

[90] I accept that, if a stay is granted, the detriment to Mr and Mrs Cronin-Lampe is likely to be significant. The interim payment is insufficient to mitigate, for a period of two years, the consequences to which I have referred.

[91] It is not argued by either party that there are any third-party considerations which need to be taken into account.

Apparent strength of case on appeal

[92] At the time the application for stay was made, the Court of Appeal had yet to determine whether leave to appeal should be granted. Submissions were accordingly advanced for the Minister, asserting that the prospects of a successful appeal were strong and that the points on appeal are properly or genuinely arguable, so that should favour a stay.[58]

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[58] Citing *Minnesota Mining & Manufacturing Co Ltd v Johnson & Johnson Ltd* [1976] RPC 671 (CA) at 678; and *New Zealand Insulators Ltd v ABB Ltd*, above n 35 at [21].

[93] As leave has now been granted, I need not consider this issue further. This particular consideration is, for present purposes, neutral.[59]

[94] There is, however, one point that pertains to the intended appeal which it is appropriate to mention for the avoidance of doubt.

[95] It relates to the issue which the Minister has raised as to causation. In her submissions to the Court of Appeal, which were also placed before this Court, Ms Heenan relied on a finding that Mr and Mrs Cronin-Lampe were suffering from pre-existing PTSD as at 2 December 2012.[60] This point was referred to when I concluded that there were exceptional circumstances under s 114 of the Act, and was distinct from the assessment of causation of harm for the purposes of damages that was based on events, and harm, which occurred after 2 December 2010.[61]

Overall justice/balance of convenience

[96] I have concluded that a sum equal to the PG amounts appears to be at little risk of having to be repaid. The PG amounts have been paid in part. Payment of the full PG amounts is unlikely to render the appeal nugatory, while non-payment is likely to cause prejudice to Mr and Mrs Cronin-Lampe. A stay of the remaining PG amounts is not appropriate.

[97] Nor am I satisfied that it is appropriate to grant an order of stay for the balance of the judgment sum. Payment of the judgment sum in its entirety would be unlikely to render the appeal nugatory and in any event, as noted, that consideration is not determinative in the present circumstances. At best, the repayment issues which I have discussed favour a stay only weakly.

[98] Standing back, I am well satisfied that the risk of prejudice to Mr and Mrs Cronin-Lampe is sufficient to outweigh the factors favouring a stay.

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59 Where the merits of an appeal are difficult to assess, or not overly obvious, the Court of Appeal has treated this as a neutral or non-critical factor. See *Keung v GBR Investment*, above n 20, at [21]; and *New Zealand Cards Ltd*, above n 21, at [20]. See also *Dymocks*, above n 21, at [33]; *Salem Ltd v Top End Homes Ltd* (2005) 18 PRNZ 122 (CA) at [5]; and *New Zealand Insulators v ABB Ltd*, above n 35, at [21].

60 *Cronin-Lampe (No 1)*, above n 3, at [516].

61 See *Cronin-Lampe (No 2)*, above n 4, at [109]–[110].

Conclusion

[99] The application for a stay of execution of the balance of the judgment sum which has not been paid to date is dismissed. The balance of the judgment sum and interest thereon to the date of payment is accordingly payable. So also is the unpaid interest on the sum paid in February 2024.

[100] I reserve costs. As I understand it, there may be outstanding costs issues relating to the partial stay judgment of 7 March 2024,[62] the costs judgment of 10 July 2024,[63] and this judgment. My preliminary view is that these should be considered on a 2B basis.

[101] Any claims for costs should, if needed, be discussed promptly between counsel in the first instance. If not agreed, an application should be made within seven days of the date of this judgment, with a response given within seven days thereafter.

B A Corkill
Judge

Judgment signed at 12 pm on 6 November 2024

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62 *Stay of costs judgment*, above n 19.
63 *Costs judgment*, above n 19.

SCHEDULE A

MRS CRONIN-LAMPE, PG AMOUNTS DUE

	Interim payment made on 8 February 2024	**Total entitlement**
Compensation for humiliation etc, net after deduction for contribution	80,750	80,750
Lost remuneration from November 2012 to November 2014, net after deduction for contribution and inclusive of interest to 20/12/2023[64]	104,625	238,212
Superannuation loss for the period from November 2012 to November 2014, net after deduction for contribution and inclusive of interest to 20/12/2023[65]	-	5,701
Sale of rental property, net after deduction for contribution and inclusive of interest to 20/12/2023	-	71,754
Lost rental income, net after deduction for contribution and inclusive of interest to 20/12/2023	-	26,802
Medical expenses, net after deduction for contribution	5,016	5,016
	190,391	**$428,235** (190,391)
PG amounts due:		**$237,844** Plus interest

64 The lost remuneration and interest figures have been reached on a pro rata basis calculated using the figures in *Cronin-Lampe (No 2)*, above n 4, at sch 2.

65 The lost superannuation and interest figures have been reached on a pro rata basis calculated using the figures in *Cronin-Lampe (No 2)*, above n 4, at sch 3; and the Civil Debt Interest Calculator.

SCHEDULE B

MR CRONIN-LAMPE, PG AMOUNTS DUE

	Interim payment made on 8 February 2024	**Total entitlement**
Compensation for humiliation, net after deduction for contribution	60,562.50	60,562.50
Lost remuneration from November 2012 to November 2014, net after deduction for contribution and inclusive of interest to 20/12/2023[66]	100,261	309,045
Superannuation loss for the period from November 2012 to November 2014, net after deduction for contribution and inclusive of interest to 20/12/2023[67]	-	3,715
Sale of rental property, net after deduction for contribution and inclusive of interest to 20/12/2023	-	71,754
Lost rental income, net after deduction for contribution and inclusive of interest to 20/12/2023	-	26,802
Medical expenses, net of deduction for contribution	5,016	5,016
	$165,839.50	**$476,894.50** (165,839.50)
PG amounts due:		**$311,055** Plus interest

66 The lost remuneration and interest figures have been reached on a pro rata basis calculated using the figures in *Cronin-Lampe (No 2)*, above n 4, at sch 2.

67 The lost superannuation and interest figures have been reached on a pro rata basis calculated using the figures in *Cronin-Lampe (No 2)*, above n 4, at sch 4; and the Civil Debt Interest Calculator.

SCHEDULE C

CURRENT ESTIMATED NET VALUE OF ASSET AND LIABILITIES

		Balance
Residential property, estimated value as at 16/09/2024:		1,750,000
Registered first mortgage as at 31/08/2024:	438,988	
Amount secured by caveat, registered by current lawyers being net of interest: the caveat was registered on 21 October 2022.	375,000	
Equity:		936,012
Debt due to previous lawyers, maximum:	70,000	
Debt due to family members, no date set for repayment:	150,000	
Amount due to IRD subject to time arrangement (details unknown):	60,000	
Subtotal of debts:		(280,000)
		$656,012

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